IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Writ Petition No.1876 of 2005

Smt.Kacharibai w/o Lukha Joshi ..Petitioner

vs.

1. Shri Pandurang Shankar
Choudhary and ors. ..Respondents

Shri A.R.Pitale for petitioner.
Shri Amol Mhatre for respondent nos. 1 and 2.

CORAM: S.B.MHASE J.
19th April, 2006

P.C.

1. Heard the learned counsel for the parties.

2. The order dated 25th February, 2005 passed by the Joint Civil Judge, Jr.Dn., Bhiwandi in Reg.Civil Suit No.596 of 1990 is challenged. By the said order application filed at Exh.212 seeking amendment in the written statement has been allowed subject to cost of Rs.500/- It is pertinent to note that by amendment the following portion is proposed to be inserted as para 13A:

> "The deceased Smt.Ladibai Dundya Patil has executed the agreement to sale dated 20.04.1984 and 19.10.1976 in respect of the suit land for valuable consideration in favour of defendant nos. 1 and 2."

On perusal of the written statement and more specifically para 13, it is revealed that the original defendants who

are respondents in the present petition have relied upon the documents executed by the said Smt.Ladibai from 1974 from time to time and they have clearly contended that they are in possession of the said properties in view of the documents executed by the said Smt.Ladibai. It is pertinent to note that earlier the suit was decided against the defendants/respondents. The matter went in appeal. However, the Appellate Court has remanded the matter to the Trial Court. When the matter came to the Trial Court, amendment application was made. It is pertinent to note that the documents relying upon which the amendment is tried to be effected are already produced in evidence and they are at Exh.167/5. One of the document of 19.10.1976 is also exhibited and it is at Exh.178. Thus what appears that while in the trial the documents were relied upon and evidence in respect of those documents has also been led and the documents are before the Court. Only technically the amendment is proposed to show that the respondents/defendants are in possession of the property in view of two additional documents which are proposed to be mentioned in the proposed amendment. The Trial Court has thoroughly considered the submissions of both sides and found that there is no new case made out by the respondents. On the contrary the courts are required to be liberal while allowing the pleadings of the parties. Looking at the overall reasoning given by the Trial Court, no interference is called for. Petition is rejected.

(S.B.MHASE J.)